O Housing Boa

19 51. **File No.** 51

Legal Department

A **BRANCH**

Subject:—

Opinions Under the Bombay Housing Board Act, 1948

O Housing ~~Society~~ Board

File No. 51

Gen. 194 e.

582-A

C O N T E N T S

Legal Department File No.O.Housing Board/51.

Sr.No.	R.I./O.No.	Subject.	Pages
		Opinion under the Bombay Housing Board Act,1948.	
1	8419/29-5-1951.	Sections 47 and 54(3). Whether Govt. municipal and private lands vesting in the Bombay Housing Board can be transferred by the Board to Govt. in order to lighten the burden of subsidising which Government is paying to the Board.	1-2
2.	8846/29-5-1951.	Section 12. Meaning of the word 'salary'	3-4
3.	10332/5-6-1951.	Section 14(1)- Whether the temporary staff taken over and employed by the statutory Housing Board under section 14(1) is eligible to subscribe to the General Provident Fund.	5-6
4.	10755/7-7-1951.	Whether rent dues to the Housing Board can be recovered as arrears of land revenue.	7-8
5.	14481/11-9-1951.	Section 14(1)(a). Whether the Bombay Civil Service conduct Discipline and Appeal Rules can be said to be applicable to the employees of Bombay Housing Board taken over under section 14(1)(a).	9-10
6.	14981/20-9-1951.	Section 14(1) Whether temporary Government servants taken over and employed by the Bombay Housing Board under section 14(1) are to be deemed to be servants of the Board or Government.	11-12

15604/1-10/1951.	Section 51(3). Whether it would be legally feasible for the Government to recover from the Bombay Housing Board Occupancy price in respect of plots of lands originally transferred free of cost to the Bombay Provincail Housing Board.	15-16.

EKN.28/6/

Office of the R.L.A.

The R.L.A. is requested to advise whether the following classes of lands vesting in the Bombay Housing Board can be transferred by the Board to Government.

I. Government and municipal lands transferred to the Board free of cost and built upon;

II. Government and municiapl lands transferred to the Board free of cost and not yet built upon;

III. Private lands acquired by the Board and built upon;

IV. Private lands acquired by the Board, but not yet built upon.

The object in securing the proposed transfer is to lighten the burden of subsidy which Government is paying to the Board.

2. The Bombay Housing Board is the creature of a statute and its powers and duties are governed by the provisions of the Bombay Housing Board Act, 1948. Under sub-section (3) of section 54 all assets entrusted to the Housing Board originally constituted by G.R., P.&S.D., dated 18th January 1947, and all assets acquired by expenditure, declared under sub-section (2) to have been incurred on captial account, shall vest in the Board for the purposes of the Act. Consequently Government and municipal lands transferred to the Board, though free of cost, now vest in the Board under sub-section (3). Section 47 provides: "subject to any rules made by the State Government under this Act, the Board may retain, lease, sell, exchange or otherwise dispose of any land including the other property vesting in it and situate in the area proposed in any housing scheme sanctioned by this Act." These words are wide enough to empower the Board to retransfer the lands vested in it but of charge. But such disposal can only be made subject to the rules made by Government. Government may therefore make rules permitting such retransfer. The object of the transfer is to lighten the burden of a loan on the Board and will be for the purposes of the Act.

Sd/J.R.D. 29/5
Remembrancer of Legal Affairs.

EKN.27/6/ U.R. to L.& H.D.No.8419, dated the 29th May 1951.

LEGAL DEPARTMENT.

Bombay Housing Board Act,1948.

Section 12.
Meaning of the word 'salary'

Under the proviso to section 12 of the Bombay Housing Board Act,1948 the appointment of Secretary and the Housing Commissioner andany other officer whose salary exceeds rupees one thousand per mensum, shall be subject to the previous approval of the State Government. It appears that the scale of pay sanctioned by Government for the post of Assistant Housing Commissioner is Rs. 500-30-650 E.B.-45.1100. The Accountant General has taken the view that since the maximum of the pay scale exceeds rupees one thousand, prior approval of Government to the appointment is necessary. The question forR.L.A's consideration is whether the word 'salary' in the proviso to section 12 would mean the maximum of the pay scale of the post of the pay at the time of appointment.

2. In the absence of the definition of 'salary' in the Act the word 'salary' in section 12 would mean the actual salary drawn immediately on appointment . On this view it would be the pay on which the appointment is made and not the maximum of the scale that would be relevant to determine whether Government approval would be necessary or not. If the intention underlying this provision as expressed by the secretary, Labour and Housing Department, was otherwise the Act will have to be suitably amended.

Sd/B.D.M.

Additional Secretary to Government.

U.R. to L.&H.D.No.8846, dated the 5th June 1951.

EKN.27/6/

Office of the R.L.A.

The question raised for the R.L.A's consideration is whether the temporary staff taken over and employed by the Statutory Housing Board under section 14(1) of the Bombay Housing Board Act,1948, is eligible to subscribe to the General Provident Fund, as they have ceased to be Government servants from the date their absorption by the Bombay Housing Board appears to be correct. It will be seen from sub-section (2) of section 14 that only the permanent servants but not the temporary servants taken over and employed by the Board under sub-section (1) of section 14 have been allowed to retain their lien on their posts in the service of Government and given a right to revert. It is true that proviso (a) to section 14(1), which refers to permanent as well as temporary staff, provides that during the period of such employment all matters relating to the pay, leave, retirement, allowances, pensions, provident fund and other conditions of service of the members of the said staff shall be regulated by the Bombay Civil Service Rules or such other rules as may from time to time be made by the State Government. This however cannot be interpreted to mean that staff which on absorption by the Board as ceased to be in Government service can have a right to contribute to the General Provident Fund. It only means that if a provident fund is instituted by the Board, so far as such staff is concerned it shall provide the same terms and benefits as are provided under the Bombay Civil Services Rules in regard to provident fund. The Contrary view taken by the Labour and Housing Department is not correct.

The view taken by the Accountant General and the political & services dept. that the temporary servants are not eligible to subscribe to the General Provident Fund

Sd/J.R.D. 28/6

Remembrancer of Legal Affairs.

U.R. to Lab. & H.D.No.10332, dated the 29th June 1951.

EKN.28/6/

LEGAL DEPARTMENT.

The Bombay Housing Board Act,1949, does not provide for the recovery of dues of the Board as arrears of land revenue. Consequently Executive Engineer, East Division, Bombay though empowered under sections 9 and 10 of the Bombay Land Revenue Code would not be competent to recover the rent due to the Housing Board, as an arrear of land revenue.

Sd/B.M.D.

Additional Secretary to Government.

U.O. to L.&H.Deptt. No.10755, dated the 7th July 1951

EKN.28/6/

17996 of 29-8-1951

Submitted with reference to the P.& S.D.note at pp.21/22 ante. The question for the consideration of the R.L.A. is whether in view of proviso (a) to sub-section (1) of section 14 of the Bombay Housing Board Act,1948, theprovisions of the Bombay Civil Services Conduct, Discipline and Appeals Rules can be said to the applicable in the case of the employees of the Bombay Provincial Housing Board taken over by the Housing Board under that section.

2. Sub-section (1) of section 14 of the Bombay Housing Board Act,1948, required the Board to take over and employ such of the staff serving for the purposes of the Bombay Provincial Housing Board as the State Government directed. Clause (a) of the proviso to that sub-section provides that during the period of such employment all matters relating to the pay etc., and other conditions of service of the members of the said staff shall be regulated by the Bombay Civil Services Rules or such other rules as may from time to time be made by the State Government. Clause (b) of the proviso provides that any such member shall have a right of appeal to the State Government against any order of reduction dismissal or removal from service, fine or any other punishment. It would be seen from proviso (a) that the B-C.S.Rs.are, in the first instance, made applicable to the staff taken over by the Housing Board under section 14; and that proviso further empowers the State Government to make any other rules regulating their conditions of service. It appears that the State Government has neither made any such rules nor applied the B.C.S.Conduct,Discipline and Appeal Rules to the staff taken over by the Board under section 14. For these reasons it does not appear that the staff in question can claim to be governed by those rules. The view expressed in the former part of the P.& S.D.

appears.....

note appears to be correct.

Sd/ 4/9

D.S.(Opinion). Reply may be:-

The view taken by P.& S.D. in the first part of its office note is correct. The point ~~provided~~ raised in the second part of its office note does not arise.

Sd/R.T.K. 11/9

Additional Secretary Sd/..M.D. 11/9

U.R. to P.&S.D. No.14481 dated 11-9-1951.

EKN.28/6/

Legal Department.

The question for the R.L.A.'s consideration is whether temporary Government servants taken over and employed by the Bombay Housing Board under section 14(1) of the Bokbay Housing Board Act,1948, are to be deemed to be the servants of the Board or the State.

2. Section 14(1) of the Bombay Housing Board Act, 1948, provides that the Board shall take over and employ such of the existing staff serving for the purposes of the Bombay Provincial Housing Board constituted by Government., Resolution, Political and Services Department, No.459/46, dated 18th January1947, as the State Government may direct and every person so taken over and employed shall be subject to the provisions of that Act and the regulations made thereunder. This provision applies to all such servants, whether temporary or permanent, as were taken over by the Housing Board and it does not make any distinction between a temporary and a permanent servant. The words"shall take over and employ" clearly indicate that the servants so taken over would cease to be the servants of the Board. Sub-section (2) no doubt gives further protection ~~xxxxx~~ to permanent servants as were taken over and employed by the Board but that would not mean that such permanent servants while in service of the Board are still the servants of Government. As long as they are in the service of the Board, they would be the employees of the Board and in case they choose to revert to Government service, they are given a right so to do and on such reversion they would be entitled to the benefits provided thereunder. It would, therefore, follow that such of the servants as were taken over by the Board under section 14(1), whether

permanent-----

permanent or temporary, would remain the servants of the Board.

Sd/B.M.D.

Additional Secretary to Government.

U.R. to L.& H.D.(through P.& S.D.)No. 14981

dated the 20th September'51.

EKN.28/6/

OFFICE OF THE R.L.A.

It appears that several plots of land were transferred by Government free of cost to the Provincial Housing Board for the purpose of their housing scheme. After the passing of the Bombay Housing Board Act,1948, all the assets of that Board were transferred to the statutory Board constituted under the said Act. Sub-section (3) of section 54 of the Bombay Housing Board Act,1948, provides that all the assets entrusted to the Bombay Provincial Housing Board for the purposes referred to in G.R.P.&S.D.No.459/46, dated 18th January 1947 shall vest in the Housing Board for the purposes of the Act. As observed by the R.L.A. in his opinion No.8419, dated 29th May 1951, Government and Municipal lands transferred to the Board, though free of cost now vest in the Board under section 54(3) . The Bombay Housing Board will have therefore to be deemed to be the occupant of those lands and at the most would beliable to pay the land revenue; the Boart cannot be required to pay the occupancy price. The view expressed by the Assistant Secretary,L.&H.D. is correct.

Sd/J.R.D. 29/9

Remembrancer of Legal Affairs.

EKN. 28/6/ U.R. to L.&H.D.No.15604,dated the 1st October 1951.